

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 05-8 Erie
)	
MICHAEL KOSTENIUK)	

DEFENDANT'S POSITION WITH RESPECT TO SENTENCING FACTORS

AND NOW, comes the defendant, Michael Kosteniuk, by his attorney, Thomas W. Patton, Assistant Federal Public Defender, and respectfully files his Position With Respect To Sentencing Factors. In support thereof, counsel states:

Because Mr. Kosteniuk's advisory guideline imprisonment range is lower than the five-year mandatory minimum sentence applicable to count one, his guideline range is five years. There is no reason to impose a sentence of imprisonment in excess of the mandatory minimum.

Ordinarily, the United States Code and the guidelines would limit the length of supervised release in this case to three years since Mr. Kosteniuk's offense is a Class C felony. (PSR ¶¶ 66, 67) Following the PROTECT Act, however, Mr. Kosteniuk can be placed on supervised release for life. Id. While a lifetime of supervised release may be appropriate for some, if not many defendants convicted of a crime involving child pornography, that is certainly not the case here. Mr. Kosteniuk has no prior record. He has been under pretrial supervision for sixteen months without incident. A three-year term of supervised release would result in Mr. Kosteniuk being either under pretrial supervision, in prison, or under post-incarceration supervision for over nine years. That is more than enough time to deter Mr. Kosteniuk from committing a new offense, and to protect the public. Any longer term of supervised release would be a colossal waste of limited supervision resources.

WHEREFORE, defendant, Michael Kosteniuk, respectfully requests that this Honorable Court impose a sentence of sixty months incarceration followed by a three-year term of supervised release.

Respectfully submitted,

/s/ Thomas W. Patton

Thomas W. Patton

Assistant Federal Public Defender

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